

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TERENCE TREMAINE ANDRUS)	
)	
Petitioner,)	
)	
v.)	No.
)	
LORIE DAVIS, Director, Texas Department of Criminal Justice, Correctional Institutions Division,)	Capital Case
)	
Respondent.)	
)	

MOTION FOR APPOINTMENT OF COUNSEL

Petitioner, TERENCE TREMAINE ANDRUS, by undersigned counsel, respectfully requests that the Court appoint Jason Hawkins, the Federal Public Defender for the Northern District of Texas, and the Capital Habeas Unit (“CHU”), to represent him in federal habeas corpus proceedings pursuant to 18 U.S.C. § 3599(a)(2). In support of this request, Petitioner sets forth the following:

1. In November 2012, Mr. Andrus was convicted of capital murder and sentenced to death by a Texas jury. The Texas Court of Criminal Appeals affirmed Mr. Cruz-Garcia’s conviction and death sentence on direct appeal on March 23, 2016. *Andrus v. State*, AP-76,936 (Tex. Crim. App. Mar. 23, 2016) (on rehearing)

(unpublished). On April 18, 2016, the Texas Court of Criminal Appeals issued the mandate on appeal.

2. On February 13, 2019 the Texas Court of Criminal Appeals denied Mr. Andrus's application for post-conviction relief. *Ex parte Andrus*, 2019 WL 622783 (Tex. Crim. App. Feb. 13, 2019) (unpublished).

3. Mr. Andrus is entitled to the appointment of counsel under 18 U.S.C. § 3599(a), as an indigent person sentenced to death. He has never had his constitutional claims for relief addressed by a federal court and has a statutory right to the assistance of counsel in order to prepare and present those claims. *See* 18 U.S.C. § 3599(e); *McFarland v. Scott*, 512 U.S. 849, 857-58 (1998).

4. The Texas Office for Capital and Forensic Writs (OCFW) represented Mr. Andrus on state habeas proceedings pursuant to Texas Code of Criminal Procedure, Article 11.071, and continued to represent Mr. Andrus at the time his state habeas application was denied. The OCFW, however, is statutorily precluded from representing clients in federal habeas corpus proceedings. We have communicated with the newly-formed CHU in the Northern District of Texas, and they are able and willing to represent Mr. Andrus for his federal proceedings.

5. Jason D. Hawkins, the Federal Defender for the Northern District of Texas, is willing to accept the appointment for Mr. Andrus, and will assign attorneys responsible for Mr. Andrus's representation from the CHU in his office. That unit

consists of attorneys who specialize in capital habeas corpus and post-conviction litigation. The CHU was created to assist inmates, such as Mr. Andrus, in seeking federal habeas corpus relief from their conviction and death sentence. Funding for the CHU was authorized as of October 1, 2017, and the CHU is now staffed and operational.

6. The CHU is adequately staffed and able to represent Mr. Andrus. Moreover, because the CHU is independently funded, it will not seek any funding, reimbursement, or expenses from this Court in representing Mr. Andrus.

7. When the United States Court of Appeals for the Fifth Circuit approved the establishment of the CHUs, they intended that the units take out-of-district cases, such as that of Mr. Andrus. In a letter sent to the Defender Services Office, it was explained that the CHUs would “represent capital habeas petitioners in federal courts state-wide, including the Southern and Eastern Districts of Texas.” *See* Ex. A.

8. Mr. Hawkins contact information is as follows:

Jason D. Hawkins
Federal Public Defender
Northern District of Texas
525 Griffin Street, Suite 629
Dallas, Texas 75202
214.767.2746
214.767.2886 fax

9. Mr. Andrus has been deemed indigent by the state courts and entitled to appointed counsel, and he remains so. Mr. Andrus has requested that the CHU be appointed to represent him.

WHEREFORE, Petitioner, Mr. Andrus, requests that the Court appoint Jason Hawkins, the Federal Public Defender for the Northern District of Texas, and the Capital Habeas Unit of that office, to represent him in federal habeas corpus proceedings as counsel pursuant to 18 U.S.C. § 3599(a)(2). A proposed order is attached.

February 28, 2019
Austin, Texas

Respectfully submitted,

/s/ Benjamin B. Wolff
Benjamin B. Wolff
Texas Bar # 24091608
Director, Office of Capital and Forensic Writs
1700 Congress Ave., Suite 460
Austin, TX 78701
benjamin.wolff@ocfw.texas.gov
(512) 463-8600
(512) 463-8590 (fax)

CERTIFICATE OF SERVICE

On February 28, 2019, a copy of the foregoing motion was served upon the Office of the Texas Attorney General by United States mail at the following address:

Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

In addition, a courtesy copy of this motion was served upon Edward L. Marshall, Chief, Criminal Appeals Division, Office of the Texas Attorney General via electronic mail.

/s/ Benjamin B. Wolff
Benjamin B. Wolff

EXHIBIT A

**UNITED STATES COURTS
FIFTH JUDICIAL CIRCUIT**

600 CAMP STREET, ROOM 100
NEW ORLEANS, LOUISIANA 70130

PAUL BENJAMIN ANDERSON, JR.
CIRCUIT EXECUTIVE

PHONE: (504) 310-7777
FAX: (504) 310-7778

May 17, 2017

Ms. Cait T. Clarke
Chief, Defender Services Office
Administrative Office of the
United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

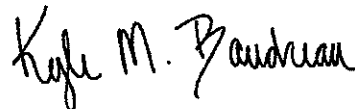
Re: Establishment of Capital Habeas Units (CHUs)

Dear Ms. Clarke:

Please be advised that the U.S. Court of Appeals for the Fifth Circuit has approved the establishment of two Capital Habeas Units (CHUs) in the state of Texas, one in the Northern District of Texas (Dallas) and one in the Western District of Texas (Austin). These units will represent capital habeas petitioners in federal courts state-wide, including the Southern and Eastern Districts of Texas. Each CHU unit is authorized staffing of three attorneys. Please provide this information to the JCUS Committee on Defender Services for consideration.

Regards.

Sincerely,



Kyle M. Boudreau
Assistant Circuit Executive

cc: Fifth Circuit Judges
Texas District and Magistrate Judges
Texas Federal Public Defenders